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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,688	09/23/2000	Christopher Charles McCormick	Indigo 1	4264
22897	7590	10/15/2004		
DEMONT & BREYER, LLC SUITE 250 100 COMMONS WAY HOLMDEL, NJ 07733			EXAMINER WARDEN, JILL ALICE	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/668,688	MCCORMICK ET AL.	
	Examiner	Art Unit	
	Jill A. Warden	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20, 23, 24 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 22, 25 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

The finality of the last Office action is withdrawn. The indicated allowability of claims 21 and 24 has been vacated and a new reference is being applied. Examiner regrets the late citation of this reference.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of

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35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 20, 23, 24, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Consumers Union.org and Consumer Reports Web Site.

Consumers Union, which publishes Consumer Reports and maintains the Consumer Reports web site and corresponding database, is an independent, nonprofit testing and information organization. Consumers Union provides a comprehensive source for unbiased advice about products and services, personal finance, health and nutrition, etc. Since 1936, Consumers Union has been testing products and informing the public about those tests. The tests evaluate products based on several criteria, which are established by the Consumers Union. On the Consumer Reports web site, members may search for information on a particular product, marketed by a number of producers, and the web site will show results of tests on that product, evaluating the specifically established criteria. Consumer Reports will also give recommendations on which product is a "best buy."

The teachings on these two web sites differ from the claims at issue in specifying a particular chemical for purchase, and in the ability of the prospective purchaser to specify a particular requirement for the chemical.

Consumer Reports evaluates all sorts of products, from appliances to foods, to personal care items. It would be within the knowledge of the artisan that a food product, such as a vegetable oil, would be considered a "chemical." With respect to the ability to put in specifications of the product as required by the

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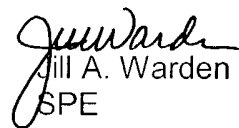
prospective purchaser, i.e. an oil with a specific saturated fat content, Consumer Reports web site does not teach this. Results of a search on the Consumer Reports Web site will display a variety of criteria which may correspond to that requirement. It would have been obvious to one having ordinary skill in the art to design the search engine to allow for multiple inputs, i.e. product and requirement, in order to provide most accurate results.

***Allowable Subject Matter***

Claims 22, 25 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no suggestion in the prior art to obtaining statistics on purchases of chemicals, excluding manufacturer data, or storing requirements in a separate database.

***Conclusion***

Any inquiry concerning this communication should be directed to Jill A. Warden at telephone number (571) 272-1267.

  
Jill A. Warden  
SPE  
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